

§ 1270.38

agency action for purposes of review under 5 U.S.C. 701–706.

Subpart D—Accessing Presidential Records

§ 1270.38 Public access to Presidential records.

Public access to Presidential records generally begins five years after the President leaves office, and is administered through the Freedom of Information Act (5 U.S.C. 552), as modified by the Presidential Records Act (44 U.S.C. 2204(c)).

§ 1270.40 Restricting access to Presidential records.

(a) An incumbent President may, prior to the end of the President's term of office or last consecutive term of office, restrict access to certain information within Presidential records created during their administration, for a period not to exceed 12 years after the President leaves office (in accordance with 44 U.S.C. 2204).

(b) If a President specifies such restrictions, the Archivist consults with that President or the President's designated representative to identify the affected records, or any reasonably segregable portion of them.

(c) The Archivist then restricts public access to the identified records or the restricted information contained in them until the earliest of following occurs:

(1) The restricting President waives the restriction, in whole or in part;

(2) The restriction period in paragraph (a) of this section expires for the category of information; or

(3) The Archivist determines that the restricting President or an agent of that President has published the restricted record, a reasonably segregable portion of the record, or any significant element or aspect of the information contained in the record, in the public domain.

§ 1270.42 Appealing restricted access.

(a) If the Archivist denies a person access to a Presidential record or a reasonably segregable portion of it due to a restriction made under § 1270.40, that person may file an administrative appeal. To file an administrative appeal

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requesting access to Presidential records, send it to the director of the Presidential Library of the President during whose term of office the record was created, at the address listed in 36 CFR 1253.3. To file an administrative appeal requesting access to Vice Presidential records, send it to the director of the Presidential Materials Division at the address listed in 36 CFR 1253.1.

(b) An appeal must arrive to the director within 90 calendar days from the date on the access denial letter.

(c) Appeals must be in writing and must identify:

(1) The specific records the requester is seeking; and

(2) The reasons why the requester believes they should have access to the records.

(d) The director responds to the requester in writing and within 30 working days from the date they receive the appeal. The director's response states whether or not the director is granting access to the Presidential records and the basis for that decision. The director's decision to withhold release of Presidential records is final and is not subject to judicial review.

§ 1270.44 Exceptions to restricted access.

(a) Even when a President imposes restrictions on access under § 1270.40, NARA still makes Presidential records of former Presidents available in the following instances, subject to any rights, defenses, or privileges which the United States or any agency or person may invoke:

(1) To a court of competent jurisdiction in response to a properly issued subpoena or other judicial process, for the purposes of any civil or criminal investigation or proceeding;

(2) To an incumbent President if the President seeks records that contain information they need to conduct current Presidential business and the information is not otherwise available;

(3) To either House of Congress, or to a congressional committee or subcommittee, if the congressional entity seeks records that contain information it needs to conduct business within its jurisdiction and the information is not otherwise available; or

(4) To a former President or their designated representative for access to the Presidential records of that President's administration, except that the Archivist does not make any original Presidential records available to a designated representative that has been convicted of a crime that involves reviewing, retaining, removing, or destroying NARA records.

(b) The President, either House of Congress, or a congressional committee or subcommittee must request the records they seek under paragraph (a) of this section from the Archivist in writing and, where practicable, identify the records with reasonable specificity.

(c) The Archivist promptly notifies the President (or their representative) during whose term of office the record was created, and the incumbent President (or their representative) of a request for records under paragraph (a) of this section.

(d) Once the Archivist notifies the former and incumbent Presidents of the Archivist's intent to disclose records under this section, either President may assert a claim of constitutionally based privilege against disclosing the record or a reasonably segregable portion of it within 30 calendar days after the date of the Archivist's notice. The incumbent or former President must personally make any decision to assert a claim of constitutionally based privilege against disclosing a Presidential record or a reasonably segregable portion of it.

(e) The Archivist does not disclose a Presidential record or reasonably segregable part of a record if it is subject to a privilege claim asserted by the incumbent President unless:

(1) The incumbent President withdraws the privilege claim; or

(2) A court of competent jurisdiction directs the Archivist to release the record through a final court order that is not subject to appeal.

(f)(1) If a former President asserts the claim, the Archivist consults with the incumbent President, as soon as practicable and within 30 calendar days from the date that the Archivist receives notice of the claim, to determine whether the incumbent President will uphold the claim.

(2) If the incumbent President upholds the claim asserted by the former President, the Archivist does not disclose the Presidential record or a reasonably segregable portion of the record unless:

(i) The incumbent President withdraws the decision upholding the claim; or

(ii) A court of competent jurisdiction directs the Archivist to disclose the record through a final court order that is not subject to appeal.

(3) If the incumbent President does not uphold the claim asserted by the former President, fails to decide before the end of the 30-day period detailed in paragraph (f)(1) of this section, or withdraws a decision upholding the claim, the Archivist discloses the Presidential record 60 calendar days after the Archivist received notification of the claim (or 60 days after the withdrawal) unless a court order in an action in any Federal court directs the Archivist to withhold the record, including an action initiated by the former President under 44 U.S.C. 2204(e).

(g) The Archivist may adjust any time period or deadline under this subpart, as appropriate, to accommodate records requested under this section.

§ 1270.46 Notice of intent to disclose Presidential records to the public.

When the Archivist determines it is in the public interest to make a Presidential record available to the public for the first time, the Archivist will:

(a) Promptly notify, in writing, the former President during whose term of office the record was created and the incumbent President, or their representatives, of the intended disclosure. This notice informs the Presidents of the 60-day period in which either President may make a claim of constitutionally based privilege under § 1270.48; and

(b) Notify the public. The notice includes the following information about the intended disclosure:

(1) The number of pages;

(2) A brief description of the records;

(3) The NARA case number;

(4) The date on which the 60-working-day period set out in § 1270.48(a) expires; and